

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
ADMINISTRATIVE LAW JUDGE LAUREN ESPOSITO**

**LEWIS FOODS OF 42<sup>ND</sup> STREET, LLC, A  
McDONALD'S FRANCHISEE, AND  
McDONALD'S USA, LLC, JOINT EMPLOYERS  
et al.**

**and**

**FAST FOOD WORKERS COMMITTEE AND  
SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC, et al.**

**Cases 02-CA-093893, et al.  
04-CA-125567, et al.  
13-CA-106490, et al.  
20-CA-132103, et al.  
25-CA-114819, et al.  
31-CA-127447, et al.**

**STIPULATED PROTECTIVE ORDER**

**1. DEFINITIONS**

1.1. "Board" means the National Labor Relations Board.

1.2. "General Counsel" means the General Counsel of the National Labor Relations Board or his successors.

1.3. "This Litigation" means litigation of the 13 complaints, involving 78 unfair labor practice charges, issued by the General Counsel on December 19, 2014; the six complaints, involving 23 unfair labor practice charges, issued by the General Counsel on February 13, 2015; or subsequent General Counsel complaints against McDonald's USA, LLC ("McDonald's") and/or McDonald's franchisees.

1.4. "CONFIDENTIAL" information or items means information (regardless of how it is generated, stored or maintained) or any tangible thing that is designated as confidential by the Designating Party and that contains, includes or consists of proprietary, trade secret, financial, personal, business, technical, strategic planning, or commercially sensitive information that the Designating Party maintains in confidence in the ordinary course of business and which, if disclosed, would cause specific harm to the Designating Party, as well as confidential information that is otherwise protected from disclosure under applicable law, such as Federal Rule of Civil Procedure 26, the Privacy Act (5 U.S.C. § 552a), Board precedent, or the First Amendment to the U.S. Constitution.

1.5. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information or items means extremely sensitive information or items, disclosure of which would create a substantial risk of serious harm that could not be avoided by less restrictive means, including designation as CONFIDENTIAL.

1.6. "Designating Party" means a Party or non-Party that designates information or

items as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

1.7. “Disclosure Material” means all items of information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things) that are produced by a Party or non-Party in This Litigation.

1.8. “Expert” or “Experts” means a person with specialized knowledge or experience in a matter pertinent to This Litigation who has/have been retained by a Party or its counsel to serve as an expert witness or as a consultant for purposes of This Litigation.

1.9. “Party” or “Parties” means any person or entity that is a party to This Litigation and who has full rights of participation, namely the General Counsel, any Charging Party, and any Respondent.

1.10. “Producing Party” means a Party or non-Party that produces Disclosure Material in This Litigation.

1.11. “Protected Material” means material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY pursuant to this Order, although not such material after its designation has been successfully challenged.

1.12. “Receiving Party” means a Party that receives Disclosure Material from a Producing Party.

## 2. SCOPE

The protections conferred by this Order cover not only Protected Material but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover (a) information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

## 3. DURATION

Even after final disposition of This Litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or an order otherwise directs.

#### 4. DESIGNATING PROTECTED MATERIAL

##### 4.1. Exercise of Restraint and Care

Each Party or non-Party that designates information or items for protection under this Order must make good faith efforts to take care to limit any such designation to only those specific materials that qualify under the appropriate standards.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purposes (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation and must provide new copies of the information or items that were mistakenly designated without the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" markings.

##### 4.2. Manner and Timing of Designations

Before delivering any documents or other material containing CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information or items, the Producing Party shall affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to the Protected Materials (and, in the case of documents, to each page that qualifies for protection). The legend shall not interfere with the legibility of any of the contents of the documents or other material.

A Party or non-Party that makes documents or other material available for inspection prior to production (e.g., in connection with efforts to avoid or resolve disputes regarding subpoenas and document production) need not designate them for protection until such time as the material is formally produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY. Thereafter, the Producing Party will determine which documents or materials qualify for protection under this Order, and, before producing the specific documents or materials, the Producing Party must affix the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" legend as required under the preceding paragraph in order to claim protection pursuant to this Order.

For oral testimony, the Designating Party shall identify on the record, before the close of the hearing or proceeding, either that all the testimony is protected or that it intends to designate portions of the testimony as protected. Thereafter, the Designating Party shall have 10 days after receipt of the relevant transcript to designate in writing to the other Parties and the reporter, those portions of the testimony that the Designating Party claims constitute CONFIDENTIAL and/or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information. During this

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10-day period, the testimony shall be deemed HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. If, at the expiration of the 10 day period, the Designating Party fails to provide such written notice, then the protection is waived.

4.3. Inadvertent Failures to Designate

If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive a Producing Party’s right to secure protection under this Order for such material. Upon timely correction of a failure to designate, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5. DISPUTES REGARDING DESIGNATIONS

A Party or non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party or non-Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

If a Party or non-Party seeks to challenge a designation, it shall initiate the process by providing unambiguous written notice of its challenge, and the notice must identify each designation it is challenging and describe the basis for each challenge. The affected Parties and/or non-Parties shall then, within five business days of receipt of the written notice, confer in good faith, or make a good faith attempt to so confer, in an effort to resolve the dispute.

If a dispute is not resolved through the confer process just described, the challenging Party or non-Party may move for a ruling from the Administrative Law Judge on all disputed designations.

While a dispute is pending, the disputed matter shall be treated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY in accordance with its original designation.

The burden of persuasion in any challenge proceeding will be in accordance with legal principles governing protective orders in federal civil litigation. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens) may expose the challenging Party or non-Party to sanctions.

All disputes arising under this Order shall be initially resolved by the Administrative Law Judge.

## 6. ACCESS TO AND USE OF PROTECTED MATERIAL

### 6.1. Basic Principles

A Receiving Party may use Protected Material disclosed in This Litigation only for prosecuting, defending, or attempting to settle This Litigation, and for no other purposes or client and neither for nor in connection with any other litigation or potential, contemplated or anticipated litigation, except that a Receiving Party or a Receiving Party's counsel may use Protected Material other than in This Litigation if agreed in writing by the Designating Party.

### 6.2. Disclosure of CONFIDENTIAL Information or Items

Unless otherwise ordered by a court or Administrative Law Judge or Board, or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

- (1) counsel to a Party, including counsel's partners, associates, legal assistants, secretaries and employees;
- (2) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary in connection with This Litigation;
- (3) experts of the Receiving Party (a) to whom disclosure is reasonably necessary for This Litigation and (b) who have in advance (i) been provided a copy of this Order, (ii) agreed in writing to comply with it, and (iii) been specifically advised that any portion of their work product that contains or discloses the substance of Protected Material is subject to all the provisions of this Order.
- (4) the General Counsel and counsel for the General Counsel;
- (5) the Administrative Law Judge, the Board, any court before which some aspect of This Litigation is pending, and their respective support personnel;
- (6) court reporters or stenographic reporters involved in This Litigation;
- (7) litigation support service providers and other individuals assisting the Receiving Party (a) to whom disclosure is reasonably necessary for This Litigation and (b) who have in advance (i) been provided a copy of this Order, (ii) agreed in writing to comply with it, and (iii) been specifically advised that any portion of their work product that contains or discloses the substance of Protected Material is subject to all the provisions of this Order;
- (8) witnesses or prospective witnesses (a) to whom disclosure is reasonably necessary for This Litigation and (b) who have in advance (i) been provided a copy of this Order and (ii) agreed in writing to comply with it; and

(9) any person who authored, previously received, or was directly involved in the specific matter(s) addressed in the CONFIDENTIAL information, as evidenced from its face or reasonably certain in view of other testimony or evidence.

6.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or Items

Unless otherwise ordered by a court or Administrative Law Judge or Board, or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY only to:

(1) counsel to a Party, including counsel’s partners, associates, legal assistants, secretaries and employees;

(2) Experts of the Receiving Party (a) to whom disclosure is reasonably necessary for this Litigation and (b) who have in advance (i) been provided a copy of this Order, (ii) agreed in writing to comply with it, and (iii) been specifically advised that any portion of their work product that contains or discloses the substance of Protected Material is subject to all the provisions of this Order.

(3) the General Counsel and counsel for the General Counsel;

(4) the Administrative Law Judge, the Board, any court before which some aspect of This Litigation is pending, and their respective support personnel;

(5) court reporters or stenographic reporters involved in This Litigation; ~~and~~

(6) any person who authored, previously received, or was directly involved in the specific matter(s) addressed in the HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY information, as evidenced from its face or reasonably certain in view of other testimony or evidence-; and

(7) litigation support service providers and other individuals assisting the Receiving Party (a) to whom disclosure is reasonably necessary for This Litigation and (b) who have in advance (i) been provided a copy of this Order, (ii) agreed in writing to comply with it, and (iii) been specifically advised that any portion of their work product that contains or discloses the substance of Protected Material is subject to all the provisions of this Order.

6.4. Use or Filing of CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or Items in This Litigation.

Immediately before introducing into evidence in This Litigation any Protected Material, the introducing party shall notify the other parties and adjudicator, and the Designating Party for the material about to be introduced shall have the opportunity to move, before its introduction,

for an order that the material be placed under seal. If the advance notice is not provided, the Designating Party shall have a reasonable time after the material's introduction to move that it be sealed.

Upon such motion, the hearing room or courtroom shall be cleared of all individuals not entitled to have access to the Protected Material under this Order. If the motion is granted, the evidence shall be placed under seal and any transcript of proceedings occurring while the room is cleared shall also be placed under seal. Alternatively the evidence may be placed provisionally under seal for final resolution of the sealing issue at a later date.

When filing Protected Material in This Litigation, the filing party shall file the material provisionally under seal. The Designating Party for the material shall then have the opportunity to move within five business days of service of the filing that the material be filed permanently under seal. The Administrative Law Judge may deny the motion, order the material filed provisionally under seal pending a final, later decision, or order the material filed permanently under seal.

7. PROTECTED MATERIAL SUBPOENAED, ORDERED PRODUCED, OR REQUESTED IN DISCOVERY IN OTHER LITIGATION

If a Party is served with a subpoena, court order or discovery request pertaining to other litigation that either compels or requests disclosure of any information or items designated in This Litigation as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, that Party must:

- (1) promptly notify the Designating Party, with a copy of the subpoena, court order or discovery request;
- (2) promptly notify in writing the party who caused the subpoena, order or discovery request to be issued that some or all of the material covered by the subpoena or order is subject to this Order, providing a copy of this Order; and
- (3) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

In the case of a discovery request or subpoena: If the Designating Party timely seeks a protective order, the Party served with the discovery request or subpoena shall not provide the responsive Protected Material pending a ruling on the protective-order motion. The Designating Party shall bear the burden and expense of seeking protection of its Protected Material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party to disobey a lawful directive from a judge, a court or the Board.

8. FREEDOM OF INFORMATION ACT (FOIA) REQUESTS

The General Counsel shall promptly notify a Designating Party of any FOIA request it receives that seeks the disclosure of Protected Material in order to permit the Designating Party

the opportunity to explain why such records should not be disclosed.

The General Counsel shall treat any information marked by a Designating Party as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY as triggering the procedures of 5 U.S.C. § 552(b)(4) and will make reasonable efforts to protect confidential and proprietary documents under Exemption 4 of FOIA.

The General Counsel shall not disclose any Protected Material in response to a FOIA request without first providing the Designating Party written notice at least 10 business days in advance of the proposed disclosure. Pursuant to FOIA, in the event of such notice, the Designating Party shall have the right to file a written statement explaining why the information comes within § 552(b)(4) and to object to any disclosure. In the event that, after consideration of that statement, the General Counsel ultimately decides in favor of disclosure, the General Counsel acknowledges that the Designating Party may have the right to file a lawsuit seeking to prevent the disclosure of the assertedly confidential information. In this regard, the General Counsel will follow the process described in § 102.117 of the Board’s Rules and Regulations. If the Designating Party files suit to enjoin such disclosure, the Board will not disclose the Protected Material pending the final disposition of that lawsuit, although the Board may comply with any interim court order.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstances not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the persons or entities to whom unauthorized disclosures were made of all the terms of this Order, and (d) request that such person agree to be bound by this Order.

10. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL – NO WAIVER

Disclosure in this proceeding of information protected by any privilege (including protected work product) shall not constitute a waiver of any otherwise valid claim of privilege, and failure to assert a privilege as to one such document or communication shall not be deemed to constitute a waiver of the privilege as to any other document or communication allegedly so protected, even involving the same subject matter. Any inadvertent disclosure of privileged or work product material in this proceeding shall not result in the waiver of any associated privilege or protective doctrine, nor result in a subject-matter waiver of any kind. If any such material is inadvertently produced, counsel for the Receiving Party shall notify the Producing Party’s counsel and will promptly return all copies of the document in its possession, delete any versions of the document on any database it maintains, and make no use of the information contained in the document provided. However, the party returning such document shall thereafter have the right to apply to the Administrative Law Judge for an order directing the production of the document on the ground that such document was not protected (prior to the inadvertent disclosure) from disclosure by any privilege or doctrine.



11. NO WAIVER OF OTHER PROTECTIONS

Disclosure of Protected Material pursuant to the procedures set forth in this Order does not constitute a waiver of any trade secret or any intellectual property, proprietary or other rights to, or in, such information. It is expressly acknowledged that no such rights or interests shall be affected in any way by production of subpoenaed material designated as containing CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY material in This Litigation.

12. RIGHTS RESERVED

12.1. Right to Seek Modification

Nothing in this Order abridges the right of any person to seek its modification by the Administrative Law Judge in the future.

12.2. Right to Assert Other Objections

Nothing in this Order shall be construed as a waiver of the right of any Party or non-Party to object to the production of documents or other material on the grounds of privilege or on any other grounds not addressed in this Order. Similarly, no Party or non-Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

13. FINAL DISPOSITION

Within 60 days after the final disposition of This Litigation, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition and hearing transcripts, legal memoranda, correspondence, deposition and hearing or trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Order as set forth in Section 3 (Duration).

14. VIOLATIONS

Any person or entity injured by a violation of this Order may bring the violation to the attention of the Administrative Law Judge at any time, and the Administrative Law Judge will have the authority to remedy any sustained claim that a breach constituted conduct prejudicial to any Party and/or to This Litigation. Appeals from the Administrative Law Judge’s rulings shall be governed by § 102.26 of the Board’s Rules and Regulations.

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Administrative Law Judge Lauren Esposito